

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES E. SAVAGE and TENNESSEE VALLEY AUTHORITY,
WIDOWS CREEK FOSSIL PLANT, Stevenson, AL

*Docket No. 03-1537; Submitted on the Record;
Issued October 20, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant sustained a hearing loss in the performance of duty.

On July 17, 2002 appellant, then a 64-year-old tipper operator, filed an occupational disease claim alleging that in the 1980s he first realized that his hearing loss was caused by factors of his employment. Appellant stated that he noticed his hearing loss at that time when he was working on the railroad tracks. He noted that he had to use a puller that "made noise very bad." On the reverse of the claim form, Jeff Ward, an employing establishment supervisor, indicated that appellant was last exposed to the conditions alleged to have caused his hearing loss on October 16, 1994.

In a statement accompanying his claim, appellant indicated that he used a shaker which was very noisy. Appellant worked 16 hours or more and the noise level on each job was extreme. He further stated that safety protection devices were not available until the Occupational Safety and Health Administration made the employing establishment provide earplugs. He also stated that during his health screenings at the employing establishment he was told that his hearing was getting bad.

Mr. Ward submitted a November 5, 2002 letter controverting appellant's claim on the grounds that the accompanying audiograms performed on appellant from April 7, 1970 through November 14, 1992 revealed that when appellant was first employed on April 8, 1970 he had a zero percent hearing loss and the last hearing test performed on appellant revealed that he had a zero percent hearing loss.

By letter dated January 17, 2003, the Office of Workers' Compensation Programs advised the employing establishment to submit additional factual and medical evidence regarding appellant's noise exposure. By letter of the same date, the Office advised appellant that it contradicted his statement that he was told that his hearing was getting bad. The Office requested that appellant submit written documentation to support his statement. Appellant did not respond.

In a May 21, 2003 decision, the Office found that appellant had failed to establish that he sustained a hearing loss in the performance of duty.¹

The Board finds that appellant has failed to establish that he sustained a hearing loss in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁵

In support of his claim, appellant submitted the results of audiograms conducted by the employing establishment during the period April 7, 1970 through November 14, 1992. While this evidence does support that appellant has some degree of hearing loss,⁶ this evidence is of

¹ On appeal, appellant has submitted new evidence. However, the Board cannot consider evidence that was not before the Office at the time of the final decision. See *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952); 20 C.F.R. § 501.2(c).

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ See *Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

⁵ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

⁶ The October 8, 1974 audiogram revealed that appellant had a six percent hearing loss in the right ear.

limited probative value on the relevant issue of causal relationship in that it does not contain a physician's opinion on the cause of appellant's hearing loss.⁷ For this reason, the Office properly denied appellant's claim alleging that he sustained a hearing loss in the performance of duty.

The May 21, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
October 20, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁷ *Arlonia B. Taylor*, 44 ECAB 591 (1993) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).